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Via E-Mail docket@energy.state.ca.us

California Energy Commission
Docket
1516 Ninth Street, MS# 4
Sacramento, CA 95814-5512

Re: Proposed Revisions to the Regulations Governing the Rules of Practice and Procedure and Power Plant Site Certification, Docket Number 04-SIT-02 ("Proposed Regulations") (04-SIT-02)

The following are our comments on the Proposed Regulations. These comments are organized by section number and only cover those issues where we have concerns about the changes to the regulations. .

Section 1207

This change is helpful and clarifies the importance of participating in the Prehearing Conference for potential intervenors. The Prehearing Conference is where the hearing schedule is discussed and the issues are narrowed to only those that have not been resolved by the parties. Significant issues raised after the Prehearing Conference create unnecessary schedule delays if the hearing schedule needs to be modified to accommodate additional issues raised by new intervenors. If possible, these unnecessary delays should be avoided.

Section 1217

This section on precedent raises concerns. We agree with Mr. Harris' comments at the hearing

on September 20th that applicants in similar situations expect to be treated in the same manner on similar issues. We would be concerned that the Commission would not have time to determine which decisions in which areas are precedent such that none would be deemed precedent. We would be concerned that similar projects would be treated differently raising equal protection and due process issues.

Section 1716

The comments of Mr. Harris and Mr. Joseph at the September 20th hearing will improve this section, and we support both comments.

Section 1719

The applicant is the party most impacted by consolidation or severance proceedings. The Proposed Regulations remove the ability of the applicant to agree or disagree with any consolidation. At a minimum the applicant should be given a specified time period within which to respond to the motion since their project depends upon a license from the Commission in order to proceed. The way the new section 1719 reads, the applicant may not be given an opportunity to respond prior to the Commission taking action on this item.

Section 1744

Section 1714.5(b) notwithstanding, we are concerned that this proposed revision will erode the Commission's authority to site power plants in Public Resources Code Section 25500. The task of licensing large power facilities lies with the Commission, a state agency, to remove potentially parochial concerns and create a forum wherein larger state interest and goals can be taken into account. We would hate to see a local agency make a politically motivated zoning consistency decision and have the Commission Staff fail to provide an independent evaluation of that determination.

Section 1751

We recommend that 1751 be revised to state:

> The presiding member's proposed decision shall be based exclusively upon the hearing record of the proceedings on the application. The decision may rely on any portion of the hearing record, including public comment entered into the hearing record, but only those items properly incorporated into the hearing record pursuant to Section 1212 or 1213 are sufficient in and of themselves to support a factual finding.

We believe this change gives the correct weight to public comment. Comments that are not given under oath and not subject to cross examination should not be the basis of findings of fact. Because these cases evolve over time with issues resolved along the way, we believe that only the public comment presented at the hearing or specifically requested to be part of the hearing record should be relied upon in the presiding member's proposed decision.

Appendix B

(b)(2)(E)

Please be aware that the control of this document does not lie with the applicant. The IOUs control when and how this document is issued. There are negotiations that happen between the applicant and the IOU regarding the study and the potential impacts. These negotiations must occur prior to writing a check to the IOU. We understand the Commission's interest in getting this information in a timely manner but are concerned that much of this process is outside of the applicant's control. An applicant can request very minor changes to the document only have the IOU take weeks or months to respond. Since the IOU projects are and will be competing directly with independent projects, there is always the potential for favoring its own projects over those that compete with them. Therefore, we respectfully request that the proposed regulations include only items that are within the control of the applicant and are not subject to potential abuse.

Environmental Information

Our general comment is that it is not a good idea to move discovery issues into the data adequacy phase. We are concerned that moving this information into data adequacy fails to take advantage of the streamlining of the process in non-controversial areas. Almost every case has subject areas that do not create environmental impacts or where the mitigation is straight forward and agreed upon by all parties. By moving the information into the data adequacy stage, each applicant will have to provide that information just to get through the data adequacy screen whether the facts of that case merit the detail in each subject area or not.

Cultural Resources

Keep the distances for surveys the same across subject areas. That way the different disciplines can conduct their field work at the same time with one request to landowners for access when necessary.

The new requirements work well for a site that has potential cultural resource impacts. If the site is located in an area relatively devoid of cultural resources, the requests are onerous. It is often difficulty finding the specific individuals with the high level of training Commission Staff would like to see in this area. We understand the desire of Commission Staff to have specialized experts when potentially significant impacts arise but find that requirement excessive for sites without real impacts.

We find it interesting that the Commission Staff states in its rationale that the base resource information is necessary because the staff has to make an independent judgment on significance but also is asking for mitigation measures in the application. Applicant's routinely provide proposed mitigation measures or project enhancements in their applications. Requiring specific

types of mitigation measures without first looking at the impacts of the project seems to prejudge an impact in all cases.

Visual Resources

We believe that the visual plume information should be conducted in discovery. Not all projects have cooling towers and not all projects produce plumes. This area of study is really in its infancy and the information provided by all parties are approximations. We would like to keep the level of accuracy of this information in perspective. We believe that the discovery process is the best place to address visual plumes.

Air Quality

Any additional mitigation that goes beyond the requirements of the local air district is always the subject of negotiation with Commission Staff. Unlike air districts, Commission Staff has not developed regional plans that take into account pollution sources other than power plants. The unusual requirements of Commission Staff should be addressed in discovery where each party has an opportunity to present the issue. Data adequacy should only include those items that are not matters that are often taken to hearings. Additional mitigation falls into the category of items that often go the hearings and therefore, should not be included in data adequacy.

Detailed offset information should be the subject of discovery. Projects have become resourceful in obtaining offsets through transfers from another air district or creating offsets. These solutions are often discussed with both the air district and Commission Staff. The Commission should support these efforts to find solutions and not saddle a project with finding the solution prior to filing their application.

Biological Resource

The request to include cooling tower drift discussions in the data adequacy requirements is another area of potential contention between Commission Staff and applicants. The potential impacts from these types of sources can be very speculative and removed. This information belongs in discovery not data adequacy.

Thank you for considering our comments on the Proposed Regulations.

Very truly yours,

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